

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TAHIR ABDUL JIHAD-BLACK a/k/a TONY
TYRONE BLACK,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. C05-5492FDB

ORDER OF DISMISSAL


In Cause No. C05-5128FDB (related to Criminal Case No. CR97-5017FDB), Petitioner moved for correction of the pre-sentence report, an adjusted term of imprisonment and supervised release after removal of enhancements, among other things. He relied on the common law Writ of *Audita Querela* to petition the Court in light of recent U. S. Supreme Court cases. Petitioner's history of filing motions pursuant to 2255 and 2254 was set forth in the Government's response to the Petition in C05-5128FDB as well as in the Court's order denying Petitioner's motion. Thus, that case was dismissed on the basis that a petitioner cannot challenge his sentence pursuant to the Writ of *Audita Querela* and because, even viewing petitioner's motion as one pursuant to Section 2255, it was successive and required certification from the Ninth Circuit. Moreover, the Court concluded that there was no basis for certification and that there was nothing in *United States v. Booker*, 125 S.

1 Ct. 738 (2005) that suggests that it applies retroactively to cases on collateral review.

2 Now Petitioner moves once again for relief pursuant to 28 U.S.C. § 2255, citing, among
3 others, *United States v. Booker*, 160 L. Ed.2d 621 (2005). This is a successive petition for which
4 Petitioner must obtain certification from the Ninth Circuit.

5 ACCORDINGLY, IT IS ORDERED: Petitioner's Motion To Vacate, Set Aside, or Correct
6 Sentence Pursuant To 28 U.S.C. § 2255 is DENIED and this cause of action is DISMISSED.

7 DATED this 3rd day of August 2005.

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10 FRANKLIN D. BURGESS
11 UNITED STATES DISTRICT JUDGE
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